

**A Tunku Noor Hayati bt Almarhum Tunku Abdul Rahman Putra
& Ors v Tunku Khadijah bt Tunku Abdul Rahman Putra
(administrator for the estate of Almarhum Tunku Abdul
Rahman Putra) & Anor**

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HIGH COURT (SHAH ALAM) — CIVIL SUIT NO 24–642–06 OF 2014
AKHTAR TAHIR J
19 FEBRUARY 2016

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*Civil Procedure — Stay of proceedings — Application for — Administration of
estate — Status of heirs of deceased questioned in Shariah Court — Shariah
Appeal Court resolved status of heirs as daughters of deceased — Heirs added as
D beneficiaries — Administrators of estate of appealed to Shariah Appeal Court to
review decision on status of heirs — Application to stay proceedings to await
decision of review*

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The first and second plaintiffs filed this application as the daughters and heirs
of Almarhum Tunku Abdul Rahman Putra Al Haj (‘Almarhum Tunku’) and the
third plaintiff as the widow of Almarhum Tunku. The defendants were the
administrators of the estate of Almarhum Tunku. The status of the first and
second plaintiffs as daughters and heirs to Almarhum Tunku was challenged in
the Shariah Court. The Shariah Appeal Court resolved finally and conclusively
F that both the first and second plaintiffs were the daughters of Almarhum
Tunku and both were added by as beneficiaries to the estate of the Almarhum
Tunku. The defendants appealed to the Shariah Appeal Court to review its own
decision. In this application, the defendant applied to stay the proceedings to
await the decision of the review.

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Held, allowing the plaintiffs’ application; dismissing the defendants’
application for stay:

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(1) The Shariah Court of Appeal had made an order based on DNA testing
which was reduced in writing in the chemist report. The chemist report
was a conclusive proof of the status of the first and second plaintiff. The
defendants also failed to challenge the legitimacy of the *nikah* certificate
between the first defendant and Almarhum Tunku. It was unlikely that
the defendants will succeed in their bid to review the decision of the
Shariah Court of Appeal (see para 3).

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(2) The stay application by the defendants was an unfounded bid to frustrate
the application of the plaintiffs. All the plaintiffs asked for was for the
defendants as administrators to account for the estate of Almarhum
Tunku. They were not seeking a distribution order of the estate. This

application to account for the estate of Almarhum Tunku could not in any way prejudice the rights of the defendants or in any way endanger the rights of all the other heirs of the estate (see para 4).

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[Bahasa Malaysia summary]

Plaintif pertama dan kedua memfailkan permohonan ini sebagai anak-anak perempuan dan pewaris-pewaris Almarhum Tunku Abdul Rahman Putra Al Haj ('Almarhum Tunku') dan plaintiff ketiga sebagai balu Almarhum Tunku. Defendan-defendan adalah pentadbir estet Almarhum Tunku. Status plaintiff pertama dan kedua sebagai anak-anak perempuan dan pewaris-pewaris kepada Almarhum Tunku dicabar di Mahkamah Syariah. Mahkamah Rayuan Syariah menyelesaikan secara muktamad dan konklusif bahawa kedua-dua plaintiff pertama dan kedua adalah anak-anak perempuan Almarhum Tunku dan kedua-dua dimasukkan sebagai benefisiari-benefisiari kepada estet Almarhum Tunku. Defendan-defendan merayu kepada Mahkamah Rayuan Syariah untuk menyemak keputusannya sendiri. Dalam permohonan ini, defendan memohon untuk menangguhkan prosiding bagi menunggu keputusan semakan tersebut.

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Diputuskan, membenarkan permohonan plaintiff-plaintif; menolak permohonan defendan-defendan bagi penangguhan:

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- (1) Mahkamah Rayuan Syariah telah membuat perintah berdasarkan atas DNA yang mana dibuat secara bertulis dalam laporan ahli kimia. Laporan ahli kimia adalah bukti konklusif mengenai status plaintiff pertama dan kedua. Defendan-defendan juga gagal untuk mencabar kesahan sijil nikah di antara defendan pertama dan Almarhum Tunku. Adalah tidak mungkin bahawa defendan-defendan akan berjaya dalam percubaan mereka untuk menyemak keputusan Mahkamah Rayuan Syariah (lihat perenggan 3).

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- (2) Permohonan penangguhan oleh defendan-defendan adalah percubaan yang tak berasas untuk mengecewakan permohonan plaintiff-plaintif. Apa yang hanya diminta oleh plaintiff-plaintif adalah untuk defendan-defendan sebagai pentadbir-pentadbir untuk memberi penjelasan memuaskan ke atas estet Almarhum Tunku. Mereka bukan memohon untuk perintah pembahagian estet tersebut. Permohonan ini untuk memberikan penjelasan yang memuaskan ke atas estet Almarhum Tunku tidak sama sekali memprejudis hak-hak defendan-defendan atau dalam cara apapun membahayakan hak-hak kesemua pewaris-pewaris estet tersebut (lihat perenggan 4).]

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Notes

For cases on application for stay of proceedings, see 2(5) *Mallal's Digest* (5th Ed, 2015) paras 8518–8564.

A *Nizam Bashir (Aston Paiva and G Premman Gopal with him) (Nizam Bashir) for the appellants.*
Abu Daud bin Abd Rahim (Farah Nadiyah bt Zainudin with him) (Azmi & Assoc) for the respondents.

B **Akhtar Tahir J:**

C [1] The first and second plaintiffs have filed this application as the daughters and heirs of Almarhum Tunku Abdul Rahman Putra Al Haj ('Almarhum Tunku') and the third plaintiff as the widow of Almarhum Tunku. The defendants are the administrators of the estate of Almarhum Tunku.

D [2] The status of the first and second plaintiffs as daughters and heirs to Almarhum Tunku had been a subject of challenge in the Shariah Court. The Shariah Court of Appeal resolved finally and conclusively that both the first and second plaintiffs were the daughters of Almarhum Tunku and both were added by as beneficiaries to the estate of the Almarhum Tunku.

E [3] The defendants have appealed to the Shariah Appeal Court to review its own decision. The defendant has applied to stay the proceedings in this originating summons to await the decision of the review. I took notice of the fact that the Shariah Court of Appeal had made an order based on DNA testing which was reduced in writing in the chemist report. To me the chemist report is a conclusive proof of the status of the first and second plaintiff. It is unlikely
F the defendants will succeed in their bid to review the decision of the Shariah Court of Appeal.

G [4] I also believed that the stay application by the defendants is an unfounded bid to frustrate the application of the plaintiffs in this case. Further all the plaintiffs are asking for is for the defendants as administrators to account for the estate of Almarhum Tunku. They are not seeking a distribution order of the estate. I do not see how this application to account for the estate of Almarhum Tunku can in any way prejudice the rights of the defendants or in any way endanger the rights of all the other heirs of the estate.

H [5] Another issue raised by the defendants is the legitimacy of the marriage of the third plaintiff with Almarhum Tunku. It is the contention of the defendant the legitimacy of the marriage has to be first resolved at the Shariah Court. The defendants further contended that although the legitimacy of the marriage
I between the third plaintiff and Almarhum Tunku was raised at the Shariah Court no specific decision was made by the Shariah Court.

[6] However on reading the order of the Shariah Court which was exhibited in the supporting affidavit as TNH4 it is clear that the Shariah Court had ruled

as follows:

1. Tuntutan Plaintiff supaya pendaftaran Pernikahan India dibatalkan adalah ditolak
2. 'Tuntutan Plaintiff untuk menentukan kesahihan Surat Nikah India adalah ditolak'
3. Tuntutan Plaintiff untuk menentukan samada terdapat satu pernikahan yang sah disisi hukum syarak di antara Defendan Pertama dengan Almarhum Tunku Abdul Rahman dan samada Defendan Pertama adalah isteri sah kepada Almarhum Tunku Abdul Rahman adalah ditolak

It is clear as daylight that the defendants had failed to challenge the legitimacy of the *nikah* certificate between the third plaintiff (the first defendant in this suit) and Almarhum Tunku.

[7] For the reason above I not only dismissed the application of stay of the defendant but at the same time allowed the plaintiffs' application

Plaintiffs' application allowed; defendants' application for stay dismissed.

Reported by Afiq Mohamad

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